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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,344	06/25/2003	Stefan Latza	F7659(V)	2612

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EXAMINER
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PEARSE, ADEPEJU OMOLOLA

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/603,344

Applicant(s)

LATZA ET AL.

Examiner

Adepeju Pearse

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. ____   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____   | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### *Specification*

1. The disclosure is objected to because of the following informalities: It does not include a brief description of the drawings.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 1 recites the

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broad recitation preferably at least 4, and the claim also recites at least two, which is the narrower statement of the range/limitation.

3. Claim 2 recites the broad limitation preferably at least 0.6mm, and the claim also recites at least 0.3mm, which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Burwell et al (U.S. Pat. No. 5,126,157). With regard to claim 1, Burwell et al disclose edible products having a lattice structure made by extruding an edible material into discrete arrays of essentially parallel filaments (abstract). The product comprises two or more for example at least four superimposed pairs of arrays of essentially parallel filaments. The angle between superimposed arrays of parallel filaments may be as much as 90°C, but preferable less than 30°C (col 4 lines 6-16). The filaments may be of cooked or cookable pasta (col 3 line 64).

6. With regard to claim 2, Burwell et al disclose a filament thickness of 1 to 3mm.

7. With regard to claim 3, it is inherent that the network has a regular repeating pattern because the filaments are parallel and comprise of alternate superimposed arrays (col 4 lines 8-9).

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8. With regard to claim 6, Burwell et al disclose that the lattice structure may contain a filling (col 4 lines 1-5).
9. Claims 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Mercer et al (U.S. Pat. No. 4,563,358). With regard to claims 9-10, Mercer et al disclose other methods of production for a pasta product such as a extrusion process wherein the net can be cut into lengths at the extruder die faces (col 4 lines 10-13). The die head is conventional in that it has two relatively rotatable or oscillating annular dies each of which has a ring of extrusion die orifices (col 5 lines 43-45). With regard to claims 11-12, Mercer et al disclose a composite product consisting of a net and a filling (col 4 line 1). Examples are disclosed in (col 4 lines 25-40).

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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12. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

13. Claims 4-5, 7-8 and 13-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burwell et al (U.S. Pat. No. 5,126,157) in view of Cuperus (U.S. Pat. No. 5,693,351), and Mercer et al (GB 1,604,586). With regard to claim 4, Burwell et al failed to disclose the pasta content. However, Cuperus teaches a filled pasta product wherein the pasta is made using flour/semolina obtained by grinding grains of cereals such as hard wheat (col 2 lines 43-47). It would have been obvious to one of ordinary skill in the art to utilize these ingredients in preparing pasta because these are well known ingredients in the art.

14. With regard to claim 5, Burwell et al and Cuperus failed to disclose hard wheat flour/semolina from durum wheat. However, it would not have involved an inventive step to utilize durum wheat or any other type of wheat in preparing pasta because it is well known in the art that pasta is made from cereal grains, which encompasses wheat.

15. With regard to claim 7, Burwell failed to disclose the filling material. However, Cuperus teaches filled pasta wherein the filling material includes meat, vegetables, cheese, etc (col 3 lines 7-9). It would be obvious to one of ordinary skill in the art to modify Burwell et al with Cuperus

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by providing a filled pasta using the same filling material as taught by Cuperus in order to provide variety to the consumer.

16. With regard to claim 8, Burwell et al failed to disclose a rehydratable or deep frozen product. However, pasta is available in dry form and it is well known to reconstitute pasta in heated or hot water before consumption. Cuperus teaches a filled pasta product that is rehydratable by pouring a hot liquid before consumption (col 2 lines 19-27). It would have been obvious to one of ordinary skill in the art to modify the pasta product taught by Burwell et al with the teachings of Cuperus in order to produce a complete meal prepared in dehydrated form.

17. With regard to claims 13 and 14, Burwell et al failed to disclose a process for preparing ready-to-eat pasta. However, Cuperus teaches a pasta product that can be readily reconstituted for consumption by pouring a hot liquid at 70°C to 90°C, which encompasses the temperature recited by applicant for a brief period of 3 to 5 minutes (col 2 lines 19-26). It would be obvious to one of ordinary skill in the art to modify the pasta product taught by Burwell et al with the teachings of Cuperus in order to produce a complete meal prepared in dehydrated form.

18. With regard to claim 9, Burwell et al failed to disclose the process for preparing a pasta product in a network or mesh-like structure by extrusion. However, Mercer et al teach a composite food product prepared by extruding an edible material through die orifices so as to produce a tube whose wall is composed of a net having mesh strands and intersections which are integrally formed (page 1 lines 19-21). The net can be formed by feeding edible material through die orifices defined between a pair of die members of which at least one is rotatable or oscillatable relative to the other to produce a tube net. By applicant's own prior art admission that networks may be suitably prepared by techniques known in the art of textile processing, plastic processing

and also food processing (see page 4 of specification lines 28-32). It would be obvious to one of ordinary skill in the art to modify the teachings of Burwell et al with Mercer et al in order to prepare a filled net-like pasta product using extrusion.

19. With regard to claim 10, Burwell et al failed to disclose the process for preparing a pasta product in a network or mesh-like structure by extrusion and the number of openings between the concentric elements. However, Mercer et al teach a composite food product prepared by extruding an edible material through die orifices so as to produce a tube whose wall is composed of a net having mesh strands and intersections which are integrally formed (page 1 lines 19-21). By applicant's own prior art admission that networks may be suitably prepared by techniques known in the art of textile processing, plastic processing and also food processing It would be obvious to one of ordinary skill in the art to expect that the rotating die has multiple openings in order to be able to produce a filled pasta product.

20. With regard to claim 11, Burwell et al disclose that the lattice structure may contain a filling (col 4 lines 1-5).

21. With regard to claim 12, Burwell et al failed to disclose co-extruding the pasta dough and the filling. However, Mercer et al teach an extruded net product with an extruded filling (page 3 lines 19-25). It would be obvious to one of ordinary skill in the art to prepare a co-extruded product in order to prevent part of the filling from falling out of the net casing when it is being chewed.



*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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